

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDREW LANCASTER, JEFFERY MILLS,
DEXTER WILLIAMS, WILLIAM DENNIS,
STEVE LIVADITIS, JIMMY VAN PELT,
H. LEE HEISHMAN III AND JOHNATON
GEORGE,

Plaintiffs,

v.

JAMES E. TILTON, Acting Secretary,
California Department of Corrections and
Rehabilitation, and EDDIE YLST, Acting
Warden, San Quentin State Prison,

Defendants.

No. C 79-01630 WHA

**ORDER RE PROCEDURE FOR
ATTORNEY'S FEES**

In order to better manage this case and to keep on top of attorney's fees petitions, any motion for attorney's fees for any work done on this case prior to and including December 31, 2006, must be filed by **FEBRUARY 1, 2007**, to be heard on a normal 35-day track. Thereafter, any motion for attorney's fees must be on a six-month basis, *i.e.*, within 30 days of the close of the six-month period, June 30 and December 31 being the period ends.

The motion must be accompanied by a detailed declaration, organized by discrete projects, breaking down all attorney and paralegal time sought to be recovered. For each project, there must be a detailed description of the work, giving the date, hours expended, attorney name, and task for each work entry, in chronological order. A "project" means a deposition, a motion, a witness interview, and so forth. It does not mean generalized statements

like “trial preparation” or “attended trial.” It includes discrete items like “prepare supplemental trial brief on issue X.” The following is an example of time collected by a project.

PROJECT: ABC DEPOSITION (2 DAYS IN FRESNO)

Date	Time-keeper	Description	Hours x	Rate =	Fee
01-08-01	XYZ	Assemble and photocopy exhibits for use in deposition	2.0	\$100	\$200
01-09-01	RST	Review evidence and prepare to examine ABC at deposition	4.5	\$200	\$900
01-10-01	XYZ	Research issue of work-product privilege asserted by deponent	1.5	\$100	\$150
01-11-01	RST	Prepare for and take deposition	8.5	\$200	\$1700
01-12-01	RST	Prepare for and take deposition	<u>7.0</u>	\$200	<u>\$1400</u>

Project Total: 23.5 \$4350

All entries for a given project must be presented chronologically one after the other, *i.e.*, uninterrupted by other projects, so that the timeline for each project can be readily grasped. Entries can be rounded to the nearest quarter-hour and should be net of write-down for inefficiency or other cause. Please show the sub-totals for hours and fees per project, as in the example above, and show grand totals for all projects combined at the end. Include only entries for which compensation is sought, *i.e.*, after application of “billing judgment.” For each project, the declaration must further state, in percentage terms, the proportion of the project directed at issues for which fees are awardable and must justify the percentage. This percentage should then be applied against the project total to isolate the recoverable portion (a step not shown in the example above).

A separate summary chart of total time and fees sought per individual timekeeper (not broken down by project) should also be shown at the end of the declaration. This

1 cross-tabulation will help illuminate all timekeepers' respective workloads and roles in the
2 overall case.

3 The declaration must also set forth (a) the qualifications, experience and role of each
4 attorney or paralegal for whom fees are sought; (b) the normal rate ordinarily charged for each
5 in the relevant time period; (c) how the rates were comparable to prevailing rates in the
6 community for like-skilled professionals; and (d) proof that "billing judgment" was exercised.
7 On the latter point, as before, the declaration should describe adjustments made to eliminate
8 duplication, excess, associate-turnover expense, and so forth. These adjustments need not be
9 itemized but totals for the amount deleted per timekeeper should be stated. The declaration
10 must identify the records used to compile the entries and, specifically, state whether and the
11 extent to which the records were contemporaneous versus retroactively prepared. It must state
12 the extent to which any entries include estimates (and what any estimates were based on).
13 Estimates and/or use of retroactively-made records may or may not be allowed, depending on
14 the facts and circumstances.

15 Ordinarily, no more than one attorney and one paralegal need be present at a deposition;
16 more will normally be deemed excessive. Ordinarily, no more than one attorney need attend a
17 law-and-motion hearing; more will normally be deemed excessive. To allow for symmetry,
18 however, the award will take into account the staffing used by the opposing party.


19 If the opposing party doubts the accuracy of the declaration, then the moving party must
20 immediately produce the original underlying time records for inspection upon request. The
21 opposing party must then file and serve any opposition. In this case, the opposition will be due
22 **fourteen calendar days** after plaintiff's detailed declaration is filed. If the opposing party
23 contends that any item or project was excessive, then the opposition must explain why and
24 provide a declaration setting forth completely all time expended by the opposing party on the
25 same and on similar projects, in the same format described above, so that symmetry may be
26 considered, making available the underlying records for inspection if requested. If any billing
27 rates are challenged, then the opposition must state the billing rates charged to the opposing
28

1 party for all professionals representing the opposing party in the case and their experience
2 levels. The opposing declaration must also state, as to each project, the percentage of the
3 project the opposition contends was directed at issues on which fees are awardable, stating
4 reasons for the percentage. This percentage should then be applied against the project total to
5 isolate the recoverable portion.

6 The opposing submissions may not simply attack the numbers in the application. It
7 must also set forth a counter-analysis. The counter-analysis should be in the same format
8 required of the applicant, arriving at a final number. The opposition must clearly identify each
9 line item in the application challenged as excessive, improper or otherwise unrecoverable and
10 explain why. The opposition, for example, may annotate (legible handwriting will be
11 acceptable) the applicant's declaration to isolate the precise numbers at issue.

12
13 **IT IS SO ORDERED.**

14
15 Dated: January 8, 2007.

16 
17 _____
18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28